

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code §1-307.02) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the adoption of amendments to section 948 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled “Standards for Participation of Residential Treatment Centers for Children and Youth” and section 949 of Chapter 9 of Title 29 DCMR, entitled “Reimbursement Principles and Limitations”.

This rulemaking changes the name of residential treatment facilities for children under the age of twenty-two (22) to psychiatric residential treatment facilities (PRTFs) to conform to guidance provided by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid (CMS). Changing the name ensures that the District will obtain the federal reimbursement for inpatient psychiatric services provided to adolescents in PRTF. These rules also modifies the PRTF payment system to ensure that reimbursements for these services keep pace with the increased cost of services provided to District of Columbia Medicaid beneficiaries.

A notice of proposed rulemaking was published in the *D.C. Register* on November 21, 2008. (55 DCR 012048). These rules amend the November 21 rulemaking consistent with the attendant State Plan for Medicaid Assistance (State Plan) governing PRTF. The State Plan amendment has been approved by the Council of the District of Columbia and CMS.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on October 23, 2009 (56 DCR 008455). No comments were received and no substantive changes have been made.

A notice of final rulemaking was published in the *DC Register* on February 26, 2010 (57 DCR 001709). This final rulemaking corrects typographical and clerical errors contained in the February 26th rulemaking. The effective date of these rules will be February 26, 2010.

Sections 948 (Standards for Participation of Residential Treatment Centers for Children and Youth) and 949 (Reimbursement Principles and Limitations) are amended to read as follows:

**948 INPATIENT PSYCHIATRIC SERVICES FOR INDIVIDUALS UNDER
 22 YEARS OF AGE**

948.1 Inpatient psychiatric services for individuals under the age of twenty-two (22) may be provided by:

- (a) A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or
 - (b) A psychiatric residential treatment facility (PRTF).
- 948.2 Inpatient psychiatric services for individuals under the age of twenty-two (22) shall be:
 - (a) Provided under the direction of a physician;
 - (b) Provided in a facility or program described in §948.1;
 - (c) Provided before the individual reaches the age of twenty-two (22), or, if the individual was receiving the services immediately before reaching the age of twenty-two (22), before the earlier of the following:
 - (i) The date the individual no longer requires the services; or
 - (ii) The date the individual reaches the age of twenty-two (22).
 - (d) Certified in writing to be necessary in the setting in which the services shall be provided or are being provided in emergency circumstances in accordance with 42 CFR 441.152; and
 - (e) Meet the conditions of participation governing the use of restraint or seclusion set forth in 42 CFR 483.350 *et seq.*, if services are provided by a PRTF.
- 948.3 For each Medicaid beneficiary or applicant who is admitted to a facility or program, the certification required pursuant to §948.2(d) shall be made by an independent team that includes a physician who has competence in diagnosis and treatment of mental illness and has knowledge of the beneficiary's health status. For an individual who applies for Medicaid while in the facility or program, the certification shall be made by the team responsible for the plan of care as described in §948.6 and shall cover any period before application for which claims are made. For emergency admissions, the certification shall be made by the team responsible for the plan of care within fourteen (14) days after admission.
- 948.4 A PRTF shall:
 - (a) Be licensed in the state where the facility is located, if required by the state;
 - (b) Have a current written provider agreement with the District of Columbia Medicaid Program;

- (c) Have a written individual plan of care for each patient as described in §948.5, developed by an interdisciplinary team of physicians and other professionals as described in §948.6 in consultation with the patient and his or her parents, legal guardians, or others in whose care the patient will be released after discharge; and
- (d) Maintain appropriate administrative and medical records for a minimum of six (6) years beyond the age of twenty-two (22) years and make such records available to officials of the Department of Health Care Finance, the Department of Mental Health, Department of Health, or other governmental officials of District, state, or federal agencies, or their designees.

948.5 Each facility or program shall have a written plan of care for each beneficiary that complies with the requirements set forth in 42 CFR 441.155 and include the following:

- (a) A certification of need for services that meets the requirements of 42 CFR 441.152;
- (b) An assessment of the beneficiary's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
- (c) An assessment of the resources of the beneficiary's family, including parents, legal guardians, or others into whose care the beneficiary will be released after the discharge;
- (d) The establishment of treatment objectives; and
- (e) The prescribing of therapeutic modalities to achieve the plan's objectives.

948.6 The interdisciplinary team consisting of physicians and other personnel that develops an individual plan of care shall:

- (a) Be employed by the facility directly or under contract;
- (b) Have demonstrated competency in child psychiatry (for example, residency in child and adolescent psychiatry and experience in inpatient child and adolescent inpatient/residential treatment settings);
- (c) Include at a minimum:
 - (1) A board-certified or board-eligible psychiatrist;
 - (2) A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or
 - (3) A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment

of mental diseases and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association; and

(d) Include one (1) of the following:

- (1) A psychiatric social worker;
- (2) A registered nurse who has specialized training or one (1) year of experience in treating mentally ill individuals;
- (3) An occupational therapist who is licensed, if required by the state, and has specialized training or one (1) year of experience in treating mentally ill individuals; or
- (4) A psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

- 948.7 Each facility or program shall not admit a District Medicaid beneficiary or applicant unless the admission has been certified as medically necessary by the District of Columbia Department of Mental Health (DMH).
- 948.8 Each facility or program shall provide active treatment consistent with the requirements set forth in 42 CFR 441.155.
- 948.9 The written plan of care shall be developed within fourteen (14) days of admission and reviewed at least every thirty (30) days thereafter.
- 948.10 Each PRTF shall provide to the requesting District child-serving agency the initial plan of care and any subsequent treatment plan adjustments, including all thirty (30) day reviews of the plan of care.

949 REIMBURSEMENT PRINCIPLES AND LIMITATIONS GOVERNING PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

- 949.1 Each PRTF shall be reimbursed on a prospective basis at a facility-specific per diem rate.
- 949.2 Each PRTF located in the District of Columbia shall be reimbursed at a rate equal to the average rate paid by the State of Maryland Medicaid Program as of July 1 each year for comparable services and provider type. The reimbursement rate calculated pursuant to this section shall become effective October 1 of each year in which the average rate was determined and shall remain in effect for a full year.
- 949.3 Each PRTF located outside of the District of Columbia may be reimbursed for services provided to District Medicaid beneficiaries who are residents of the District of Columbia. The reimbursement rates shall be determined as set forth in §§ 949.4 through 949.6.

- 949.4 If the PRTF located outside of the District of Columbia is enrolled in the Medicaid Program in the state in which the facility is located, the reimbursement rate shall be the same rate paid by the state in which the facility is located as of July 1 of each year, for comparable services rendered by a comparable provider type. The reimbursement rate shall be effective October 1 of each year and shall remain in effect for a full year. Each PRTF shall enroll in the District's Medicaid Program and provide documentation of its enrollment in the Medicaid Program in the state in which the facility is located.
- 949.5 If the PRTF located outside of the District of Columbia is not enrolled in the Medicaid Program in the state in which the facility is located, the reimbursement rate shall be the established payment rate for services charged to other third party payers. Each PRTF shall enroll in the District's Medicaid Program and be certified by the Department of Mental Health before accepting District Medicaid beneficiaries for services.
- 949.6 If the PRTF located outside of the District of Columbia is not enrolled in the Medicaid Program in the state in which the facility is located does not charge other third party payers, the reimbursement rate shall be the lowest rate charged to a self-paying recipient of services. Each PRTF shall enroll in the District's Medicaid Program and be certified by the Department of Mental Health before accepting District Medicaid beneficiaries for services.
- 949.7 All provider appeals shall be governed in accordance with the requirements set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations.

949.99 DEFINITIONS

For the purposes of sections 948 and 949, the following terms shall have the meanings ascribed:

Psychiatric residential treatment facility- a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the state in which it is located and provides inpatient psychiatric services for individuals under the age of twenty-two (22) and meets the requirements set forth in §§ 441.151 through 441.182 of Title 42 of the Code of Federal Regulations.

Psychiatrist -a person who is licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 26, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) and implementing regulations or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist - a person who is licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C.

Law 6-99; D.C. Official Code § 3-1202 *et seq.*) and implementing regulations or licensed as a psychologist in the jurisdiction where the services are being provided.

Registered nurse - a person who is licensed as a registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) and implementing regulations or licensed as a registered nurse in the jurisdiction where the services are being provided.

Occupational therapist - a person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) and implementing regulations or licensed as an occupational therapist in the jurisdiction where the services are provided.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 09-17A

Z.C. Case No. 09-17A

(Text Amendment – 11 DCMR)

(Text Amendments Related to Public Libraries in the R Zone Districts)

January 11, 2010

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1, 3, and § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, and 799; D.C. Official Code §§ 6-641.01, 641.03, and 641.07); hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on December 11, 2009, at 56 *DCR* 9336. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

The amendments permit public libraries in the R-5-A and R-5-B Zone Districts to achieve a maximum density of 2.0 FAR, and authorize the Board of Zoning Adjustment to allow a public library in any R Zone District to exceed matter-of-right lot occupancy limits and have less than the amount of parking spaces required. The amendments also eliminate the need for a public library to have a rear yard or side yard under certain circumstances. Finally, the amendments repeal § 2104.2, which is no longer necessary given the reduction in required parking spaces permitted by these text amendments.

Procedures Leading to Adoption of Amendments

A petition requesting the amendments was filed by the District of Columbia Public Library on October 13, 2009. At its October 19, 2009 public meeting, the Commission waived its rule requiring the Office of Planning (“OP”) to submit its setdown report at least ten days prior to placing on the agenda for setdown, voted to set down the proposal for hearing, authorized immediate referral of the proposed text to the National Capital Planning Commission (“NCPC”) and a 30-day advertisement period for the public hearing. At the same public meeting, the Commission also setdown a related application filed by the District of Columbia Public Library seeking a map amendment and special exception authorizing construction of a library at 3660 Alabama Avenue, S.E., Parcel 207/64.

In response to notice given pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10), Advisory Neighborhood Commission (“ANC”) 7B filed a report with the Commission stating that at a regularly-scheduled, properly-noticed meeting with a quorum present, held on November 19, 2009, ANC 7B had voted unanimously to support the petition. As indicated by its adoption of these amendments, the Commission found this advice to be persuasive.

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A public hearing was scheduled for and held on December 3, 2009, after which the Commission authorized the referral of the proposed text to NCPC and the publication of a notice of proposed rulemaking in the *D.C. Register*.

NCPC, through a delegated action dated December 30, 2009, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on December 11, 2009, 56 *DCR* 9336, for a 30-day notice and comment period. No comments were received.

At a properly noticed January 11, 2010 public meeting, the Commission took final action to adopt the text amendments as follows:

The Zoning Regulations, Title 11, DCMR, are amended as follows:

A. Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 402, Floor Area Ratio (R), is amended as follows:

1. By amending the chart appended to § 402.4 to insert specific FAR limitations for public libraries as follows:

ZONE DISTRICT AND STRUCTURE	MAXIMUM FLOOR AREA RATIO (FAR)
R-1-A, R-1-B, R-2, R-3, R-4	None prescribed
R-5-A	
Public libraries	2.0
All Other Structures	0.9
R-5-B	
Public libraries	2.0
All Other Structures	1.8
R-5-C	
All structures	3.0
R-5-D	
All structures	3.5
R-5-E	
Apartment house and hotel	6.0
Any other structure	5.0

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2. By adding a new § 403.4 to read as follows:

403.4 A public library may be permitted a lot occupancy in excess of that allowed by § 403.2 if approved by the Board of Zoning Adjustment, pursuant to § 3104.1.

3. By amending § 404.3 to insert the phrase “public library” as follows:

404.3 In the case of a lot proposed to be used by a public library, public school or a public recreation center that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, the required rear yard may be reduced or omitted.

4. By adding a new § 405.10 to read as follows:

405.10 In the case of a lot in an R District proposed to be used by a public library that abuts or adjoins along one (1) or both side lot lines a public open space, recreation area, or reservation, the required side yards may be reduced or omitted.

- B. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended as follows.

1. Section 2104, EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS: NEAR METRORAIL STATIONS, is amended as follows:

- (a) Subsection 2104.1 is amended by striking the phrase “Except as provided in § 2104.2” as follows:

2104.1 The number of parking spaces required for a nonresidential building or structure shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.
- (b) Subsection 2104.2 is repealed.

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2. Subsection 2108.2 is amended by inserting the phrase “for a public library may be reduced by up to 100%, but for all other uses” as follows:

2108.2 The amount of required parking spaces for a public library may be reduced by up to 100%, but for all other uses shall not be reduced by more than twenty-five percent (25%); provided, that for a use that is in the category of "All Other Uses" in the table in § 2101.1, the amount of required parking spaces shall not be reduced by more than fifty percent (50%).

- C. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, Special Exceptions, is amended by inserting alphabetically the following new special exception into the chart appended to § 3104.1.

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Public library with a lot occupancy in excess of that permitted by § 403.2.	Any R District	§ 403.4

On December 3, 2009, upon motion of Chairman Hood, as seconded by Commissioner Schlater Keating, the Zoning Commission **APPROVED** the proposed rulemaking at its public hearing by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On January 11, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this rulemaking at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; William W. Keating, III, to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on March 5, 2010.